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IN THE

Supreme Court of the United States

October Term, 1966

No. 847

WILLIAM RAY CORBEAN (a minor), by WILLIAM CHARLES CORBEAN, His Father and Next Friend,
Petitioner,

vs.

XENIA CITY BOARD OF EDUCATION,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CONSTITUTIONAL QUESTIONS INVOLVED

I.

Whether Title 42 United States Code, Section 1983, known as Civil Action for Deprivation of Rights Act, and Title 28, United States Code Section 1343 (3), known as Civil Rights and Election Franchise Act grant the federal courts jurisdiction in this case because of an infringement of federal constitutional rights by the application of the governmental immunity doctrine in Ohio.

II.

Whether statutory and constitutional provisions of the State of Ohio providing that a board of education may sue and be sued are violated by the doctrine of governmental immunity.

ARGUMENTS

I. Title, 42, United States Code, 1983, reads as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

This Section was enacted by Congress in 1871 in recognition of the need to implement the Fourteenth Amendment of the Constitution so as to protect the civil rights of the Negro citizens of the United States. A review of the legislative history of this act and the conditions which gave rise to its passage are found in the opinion of Mr. Justice Douglas in *Monroe v. Pape*, 81 S. Ct. 473, 365 U. S. 167, 5 L. Ed. 2nd 492. Section 1343 of Title 28, United States Code, passed in 1948, was intended to implement Section 1983.

The federal courts have consistently held that school districts, municipal corporations and similar political subdivisions of a state are not "persons" within the meaning of Section 1983. *Monroe v. Pape, supra; Egan v. City of Aurora*, 81 S. Ct. 684, 365 U. S. 514, 5 L. Ed. 2d 741, on remand 291 F. 2d 706; *Harvey v. Sadler*, 331 Fed. 2nd 387; *Sires v. Cole*, 320 Fed. 2nd 877; *Spampinato v. M. Breger & Co.*, 270 Fed. 2nd 46, certiorari denied 80 S. Ct. 409, 361 U. S. 944, 4 L. Ed. 2d 363, rehearing denied 80 S. Ct. 597, 361 U. S. 973, 4 L. Ed. 2d 553. The Xenia City Board of Education is not a "person" within the meaning of the Act and the federal courts have no jurisdiction in this case.

Section 1983 of Title 42, United States Code, and Section 1343 (3) of Title 28 United States Code, have not been

instruments for granting federal jurisdiction in cases where recovery has been denied because of governmental immunity. These Civil Rights Statutes were not intended to be used to change such substantive laws of the states. State legislatures and courts are permitted to make and interpret their own laws subject to constitutional safeguards. Substantive laws of all states recognize some tortious acts for which there is no recovery and no right to be heard. Examples of such non-recoverable claims for injuries are those for injuries inflicted by incompetent persons, minors, claims barred by the guest statute, statutes of limitations, statutes of frauds, claims against churches and charitable institutions protected from tort liability and claims in cases involving the governmental immunity doctrine. If the governmental immunity doctrine can be challenged by the Civil Rights Statutes, other substantive local laws can also be attacked under the guise of a civil rights violation and the doctrine of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, will become meaningless.

The Civil Rights Statutes passed so as to afford every citizen an opportunity to be heard by due process of law and to be treated equally by the courts do not change the local laws of the states so as to equalize justice in all states. The United States Constitution cannot provide such protection. Those states adhering to the governmental immunity doctrine, or the guest statute in automobile negligence cases for another example, are applying the law indiscriminately to all citizens. All citizens are equally allowed or denied a hearing by due process of law. The petitioner in this case has not been subjected to individual or arbitrary exercise of governmental powers. He has been treated as an equal with all citizens of Ohio and he has been denied no constitutional rights.

II. The doctrine of governmental immunity is not violative of any Ohio constitutional or statutory provisions. Article I, Section 16 of the Constitution of Ohio provides as follows:

> "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state in such courts and in such manner as they may be provided for by law."

The provisions of Article I, Section 16 are not self-executing and in the absence of enabling legislation suits may not be brought against the State of Ohio. *State. ex rel, Williams v. Glander,* 148 O. S. 188; *Raudabaugh v. State of Ohio,* 96 O. S. 513. Although the petitioner cites Section 715.05 of the Ohio Revised Code as a relevant statutory provision in this action, it is submitted that this section deals solely with municipal corporations and is inapplicable. School districts in Ohio are separate and distinct political subdivisions and the Ohio Revised Code in Section 3313.17 holds each school district to be "a body politic and corporate, and, as such, capable of suing and being sued. . . ." Nowhere, however, in the Ohio Revised Code can there be found any legislative enactment authorizing a suit in tort to be brought against a duly constituted board of education acting within its governmental capacity.

The Supreme Court of Ohio and other Ohio Courts have applied the immunity doctrine and have consistently held that school districts and boards of education are public agencies of the State for the sole purpose of administering the State system of public education and are entitled to the same degree of tort immunity with which the State itself is clothed. *Finch v. Board of Education,* 30 O. S. 37; *Elias v. Norton,* 53 O. App. 38; *Shaw v. Board of Education,* 17

O.L.A. 588. This rule of governmental immunity has also been held to apply to municipalities. *City of Wooster v. Arbenz*, 116 O. S. 281; *Eversole v. City of Columbus*, 169 O. S. 205.

The federal courts under the rule of *Erie Railroad Co. v. Tompkins* have followed the local law of Ohio. In the case of *Cuiksa v. City of Mansfield*, 250 Fed. 2nd 700, the court held that the governmental immunity doctrine has not been abrogated by the Civil Rights Statutes, and denied recovery of damages for deprivation of rights and privileges against judges of municipal courts acting under color of a statute or ordinance. The recognition by the federal courts that the States may constitutionally prohibit or regulate suits against themselves or their officers is consistent with the federal courts' recognition of the federal government's own immunity doctrine.

SUMMARY

1. The Xenia City Board of Education is not a "person" within the meaning of the Civil Rights Statutes so as to confer jurisdiction in the federal courts in this case.

2. The Civil Rights Statutes cannot be used to invoke federal jurisdiction so as to deny the State of Ohio its right to regulate or prohibit suits against itself, its agencies or its officers.

3. The Civil Rights Statutes were not intended to repeal the rule of *Erie Railroad Co. v. Tompkins*.

4. The petitioner has not been denied due process or equal protection of the laws by the application of the governmental immunity doctrine.

5. The governmental immunity doctrine as applied in this case does not violate any Ohio constitutional or statutory provisions.

6. Federal courts recognize that the governmental immunity doctrine applies to states as well as to the federal government.

CONCLUSION

No rights of the petitioner under the Fourteenth Amendment of the United States Constitution, Title 42 United States Code, Section 1983, or Title 28 United States Code, Section 1343 (3), the Constitution of Ohio, legislation thereunder or the judicial interpretation thereof, have been violated. The opinions of the District Court for the Southern District of Ohio and the United States Court of Appeals for the Sixth District should be affirmed and this Court should not take jurisdiction of this case and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Constitutional and Statutory Provisions Involved

Constitution of Ohio, Article I, Section 16

> "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state in such courts and in such manner as they may be provided for by law."

Title 42, United States Code, 1983. Civil action for deprivation of rights

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 28, United States Code, 1343. Civil rights and elective franchise

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
>
> (2) To recover damages from any person who fails to

prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivaton, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Ohio Revised Code, 3313.17 Corporate powers of the board.

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property."